

810 KAR 1:028. Disciplinary measures and penalties.

RELATES TO: KRS 230.215(2), 230.260(1), (3), 230.265(2), 230.290(2), 230.300, 230.320(1), 230.361(1)

STATUTORY AUTHORITY: KRS 230.215(2), 230.240(2), 230.260(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 230.260(3) authorizes the Authority to promulgate necessary and reasonable administrative regulations under which racing shall be conducted in Kentucky. The function of this administrative regulation is to establish the disciplinary powers and duties of the stewards and the Authority.

Section 1. Definitions. (1) "Associated person" means the spouse of an inactive person, or a companion, family member, employer, employee, agent, partnership, partner, corporation, or other entity whose relationship, whether financial or otherwise, with an inactive person would give the appearance that such other person or entity would care for or train a horse or perform veterinarian services on a horse for the benefit, credit, reputation, or satisfaction of the inactive person.

(2) "Class A drug" means a drug, medication, or substance classified as a Class A drug, medication, or substance in the schedule.

(3) "Class B drug" means a drug, medication, or substance classified as a Class B drug, medication, or substance in the schedule.

(4) "Class C drug" means a drug, medication, or substance classified as a Class C drug, medication, or substance in the schedule.

(5) "Class D drug" means a drug, medication, or substance classified as a Class D drug, medication, or substance in the schedule.

(6) "Companion" means a person who cohabits with or shares living accommodations with an inactive person.

(7) "Inactive person" means a trainer or veterinarian who has his or her license suspended or revoked pursuant to this administrative regulation pertaining to:

(a) A violation involving Class A drugs;

(b) A second or third violation involving a Class B drug in which the person's licensing privileges have been suspended or revoked for six (6) months or longer;

(c) A third or subsequent violation of 810 KAR 1:018 for an excessive TCO₂ level; or

(d) A third or subsequent violation of 810 KAR 1:018 involving shock wave, or blood gas machines.

(8) "Schedule" means the Kentucky Horse Racing Authority Uniform Drug and Medication Classification Schedule.

(9) "Withdrawal guidelines" means "The Kentucky Horse Racing Authority Withdrawal Guidelines."

Section 2. General Provisions. (1) An alleged violation of the provisions of KRS Chapter 230 relating to thoroughbred racing or Title 810 KAR shall be adjudicated in accordance with 810 KAR 1:029 and KRS Chapter 13B.

(2) If a drug, medication, or substance is found to be present in a prerace or post-race sample that is not classified in the schedule, the Authority may establish a classification after consultation with either or both of the Racing Commissioners International and the Racing and Medication Testing Consortium or their successor.

(3) Stewards and the Authority shall consider any mitigating or aggravating circumstances properly presented when assessing penalties pursuant to this administrative regulation. A licensee may provide evidence to the stewards or the Authority that the licensee complied fully with the withdrawal guidelines as a mitigating factor.

(4) The Authority has the authority to suspend or revoke the Authority-issued license of an owner, trainer, veterinarian, or other licensee.

(5) A licensee whose license has been suspended or revoked or a horse that has been suspended, shall be denied access to locations under the jurisdiction of the Authority during the term of the suspension or revocation.

(6) A suspension or revocation shall be calculated in Kentucky racing days.

(7) A person assessed a penalty pursuant to this administrative regulation shall have his or her name and the terms of his or her penalty placed on the official Web site of the Authority. If an appeal is pending, that fact shall be so noted.

(8) To protect the racing public and ensure the integrity of racing in the commonwealth, a trainer whose penalty for a Class A violation or for a Class B third offense violation has not been fully and finally adjudicated may, if stall space is available, be required to house a horse that the trainer has entered in a race in a designated stall for the twenty-four (24) hour period prior to post time of the race in which the horse is entered. If the stewards require the trainer's horse to be kept in a designated stall, there shall be twenty-four (24) hour surveillance of the horse by the association, and the cost shall be borne by the trainer.

(9) A veterinarian who administers, or is a party to, or facilitates the administration of, or is found to be responsible for the administration of a Class A drug to a horse, in violation of 810 KAR 1:018, Section 19, or who has engaged in prohibited practices in violation of 810 KAR 1:018, shall be reported to the Kentucky Board of Veterinary Examiners and the state licensing Board of Veterinary Medicine by the stewards.

(10) An administrative action or the imposition of penalties pursuant to this administrative regulation shall not constitute a bar or be considered jeopardy to prosecution of an act that violates the criminal statutes of Kentucky.

(11) If a person is charged with committing multiple or successive overages involving a Class C or D drug, the stewards or the Authority may charge the person with only one (1) offense, if the person demonstrates that he or she was not aware that overages were being administered, because the positive test results showing such overages were unavailable to the person charged. In this case, the person alleging that he or she was not aware of the overages shall bear the burden of proving that fact to the stewards or the Authority.

Section 3. Prior Offenses. (1) Prior offenses occurring in Kentucky shall be considered, in accordance with the requirements of this section, by the stewards and by the Authority in assessing penalties. Prior offenses occurring in other racing jurisdictions may be considered by the stewards and the Authority in assessing penalties. The stewards shall attach to a penalty judgment a copy of the offender's prior record containing violations that were committed both inside and outside of Kentucky.

(2) Prior offenses occurring before September 7, 2005 shall not be considered.

(3) Prior offenses involving a Class C drug or Class D drug may be considered as a prior offense, if the act that constituted the offense was committed after September 7, 2005 and within one (1) year of the offense for which the person stands charged.

(4) Prior offenses involving a Class A drug or Class B drug may be considered as a prior offense, if the act that constituted the offense was committed after September 7, 2005.

(5) Prior offenses shall not be considered for purposes of enhancing a penalty if the drug, medication, or substance that was the subject of the prior offense was of a lower class, pursuant to the schedule, than the drug, medication, or substance that is the subject of the offense for which the person stands charged.

Section 4. Penalties for Class A, B, C, and D Drug Violations and NSAID and Furosemide Violations.

(1) Class A drug. A licensee who administers, or is a party to or responsible for administering a Class A drug to a horse, in violation of 810 KAR 1:018, shall be subject to the following penalties:

(a) For a first offense:

1. A suspension or revocation of licensing privileges from zero to three (3) years as deemed appropriate by the Authority in keeping with the seriousness of the violation and the facts of the case. Section 7 of this administrative regulation shall apply to the person whose licensing privileges have been suspended or revoked.

2. The licensee whose licensing privileges may be suspended or revoked, and the Authority may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:

a. Payment of a fine of \$5,000 to \$10,000; or

b. Forfeiture of purse money won.

(b) For a second offense:

1. A suspension or revocation of licensing privileges from three (3) years to five (5) years as deemed appropriate by the Authority in keeping with the seriousness of the violation and the facts of the case. Section 7 of this administrative regulation shall apply to the person whose licensing privileges have been suspended or revoked.

2. The licensee whose licensing privileges may be suspended or revoked, and the Authority may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:

a. Payment of a fine of \$10,000 to \$20,000; or

b. Forfeiture of purse money won.

(c) For a third offense:

1. A suspension or revocation of licensing privileges for not less than five (5) years as deemed appropriate by the Authority in keeping with the seriousness of the violation and the facts of the case. A revocation of licensing privileges may be permanent. Section 7 of this administrative regulation shall apply to the person whose licensing privileges have been suspended or revoked.

2. The licensee whose licensing privileges may be suspended or revoked, and the Authority may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:

a. Payment of a fine of \$20,000 to \$50,000; or

b. Forfeiture of purse money won.

(d) Suspension of owner's horse. A horse administered a Class A drug in violation of 810 KAR 1:018 shall be subject to suspension from racing in Kentucky as follows:

1. For a first offense, a suspension from zero to sixty (60) days;

2. For a second offense, a suspension from sixty (60) to 180 days; or

3. For a third offense, a suspension from 180 to 240 days.

(2) Class B drug. A licensee who administers, or is a party to or responsible for administering a Class B drug to a horse, in violation of 810 KAR 1:018 or more than one (1) NSAID to a horse, in violation of 810 KAR 1:018, shall be subject to the following penalties:

(a) For a first offense:

1. A suspension or revocation of licensing privileges from zero to sixty (60) days as deemed appropriate by the Authority in keeping with the seriousness of the violation and the facts of the case.

2. The licensee whose licensing privileges may be suspended or revoked and the Authority may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:

a. Payment of a fine of \$500 to \$1,000; or

b. Forfeiture of purse money won.

(b) For a second offense:

1. A suspension or revocation of licensing privileges from one (1) month to six (6) months as deemed appropriate by the Authority in keeping with the seriousness of the violation and the facts of the case. Section 7 of this administrative regulation shall apply to a person whose licensing privileges have been suspended or revoked for six (6) months.

2. The licensee whose licensing privileges may be suspended or revoked, and the Authority may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:

a. Payment of a fine of \$1,000 to \$2,500; or

b. Forfeiture of purse money won.

(c) For a third offense:

1. A suspension or revocation of licensing privileges from two (2) months to one (1) year as deemed appropriate by the Authority in keeping with the seriousness of the violation and the facts of the case. Section 7 of this administrative regulation shall apply to the person whose licensing privileges have been suspended or revoked for six (6) months or longer.

2. The licensee whose licensing privileges may be suspended or revoked, and the Authority may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:

a. Payment of a fine of \$2,500 to \$5,000; or

b. Forfeiture of purse money won.

(d) Suspension of owner's horse. A horse administered a Class B drug, in violation of 810 KAR 1:018, or more than one (1) NSAID, in violation of 810 KAR 1:018, shall be subject to suspension from racing in Kentucky as follows:

1. For a first offense, no suspension;
2. For a second offense, a suspension from zero to sixty (60) days; or
3. For a third offense, a suspension from sixty (60) to 180 days.

(3) Class C drug or overage of one (1) permitted NSAID.

(a) The following licensees shall be subject to the penalties in paragraphs (b) through (d) of this subsection:

1. A licensee who administers, or is a party to or responsible for administering a Class C drug to a horse, in violation of 810 KAR 1:018; and

2. A licensee who is responsible for an overage of one (1) permitted NSAID in the following amounts in violation of 810 KAR 1:018:

- a. Phenylbutazone (>10 mcg/ml);
- b. Flunixin (>100 ng/ml); or
- c. Ketoprofen (>50 ng/ml).

(b) For a first offense:

1. A suspension or revocation of licensing privileges from zero to ten (10) days as deemed appropriate by the Authority in keeping with the seriousness of the violation and the facts of the case.

2. The licensee whose licensing privileges may be suspended or revoked, and the Authority may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:

- a. Payment of a fine of \$250 to \$500; or
- b. Forfeiture of purse money won.

(c) For a second offense within a 365-day period:

1. A suspension or revocation of licensing privileges from ten (10) days to thirty (30) days as deemed appropriate by the Authority in keeping with the seriousness of the violation and the facts of the case.

2. The licensee whose licensing privileges may be suspended or revoked, and the Authority may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:

- a. Payment of a fine of \$500 to \$1,000; or
- b. Forfeiture of purse money won.

(d) For a third offense within a 365-day period:

1. A suspension or revocation of licensing privileges from thirty (30) days to sixty (60) days as deemed appropriate by the Authority in keeping with the seriousness of the violation and the facts of the case.

2. The licensee whose licensing privileges may be suspended or revoked, and the Authority may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:

- a. Payment of a fine of \$1,000 to \$2,500; or
- b. Forfeiture of purse money won.

(4) Certain overages of Permitted NSAIDs and Furosemide Violations.

(a) The following licensees shall be subject to the penalties in paragraphs (b) through (d) of this subsection:

1. Notwithstanding Section 4(3) of this administrative regulation, a licensee who administers, or is a party to or responsible for administering an overage of one (1) permitted NSAID in the following amounts in violation of 810 KAR 1:018:

- a. Phenylbutazone (5.1-9.9 mcg/ml);
- b. Flunixin (21-99ng/ml); or
- c. Ketoprofen (11-49 ng/ml);

2. A licensee who administers, or is party to or responsible for administering an overage of Furosemide in an amount in excess of 100 ng/ml; and

3. A licensee who has not administered furosemide when the horse has been identified as a horse on furosemide.

(b) For a first offense:

1. A suspension or revocation of licensing privileges from zero to five (5) days as deemed appropriate by the Authority in keeping with the seriousness of the violation and the facts of the case.

2. The licensee whose licensing privileges may be suspended or revoked and the Authority may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of \$250 to \$500.

(c) For a second offense within a 365-day period:

1. A suspension or revocation of licensing privileges from zero days to ten (10) days as deemed appropriate by the Authority in keeping with the seriousness of the violation and the facts of the case.

2. The licensee whose licensing privileges may be suspended or revoked and the Authority may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of \$500 to \$1,000;

(d) For a third offense within a 365-day period:

1. A suspension or revocation of licensing privileges from zero days to fifteen (15) days as deemed appropriate by the Authority in keeping with the seriousness of the violation and the facts of the case.

2. The licensee whose licensing privileges may be suspended or revoked, and the Authority may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:

- a. Payment of a fine of \$1,000 to \$2,500; or
- b. Forfeiture of purse money won.

(5) Class D Drug.

(a) The penalty for a first violation involving a Class "D" drug shall be a written warning to the trainer and owner.

(b) For multiple violations involving a Class "D" drug the licensee may be subject to a suspension of licensing privileges from zero days to five (5) days as deemed appropriate by the Authority in keeping with the seriousness of the violation and the facts of the case.

(c) The licensee whose licensing privileges may be suspended, and the Authority may enter into an agreement to mitigate the suspension by agreeing to payment of a fine of no more than \$250.

Section 5. TCO2 penalties. A person who violates or causes the violation of Section 19 (6), (7) or (8) of 810 KAR 1:018 shall be subject to the following penalties:

(1) For a first offense:

(a) A suspension or revocation of licensing privileges from zero days to three (3) months as deemed appropriate by the Authority in keeping with the seriousness of the violation and the facts of the case.

(b) The licensee whose licensing privileges may be suspended or revoked, and the Authority may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:

1. Payment of a fine of \$1,000 to \$1,500; or
2. Forfeiture of purse money won.

(2) For a second offense:

(a) A suspension or revocation of licensing privileges from three (3) months to six (6) months as deemed appropriate by the Authority in keeping with the seriousness of the violation and the facts of the case.

(b) The licensee whose licensing privileges may be suspended or revoked, and the Authority may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:

1. Payment of a fine of \$1,500 to \$3,000; or
2. Forfeiture of purse money won.

(3) For a third offense:

(a) A suspension or revocation of licensing privileges from six (6) months to one (1) year as deemed appropriate by the Authority in keeping with the seriousness of the violation and the facts of the case.

(b) The licensee whose licensing privileges may be suspended or revoked, and the Authority may enter into an agreement to mitigate the suspension or revocation by agreeing to any or all of the following actions:

1. Payment of a fine of \$3,000 to \$5,000; or
2. Forfeiture of purse money won.

(4) For subsequent offenses:

(a) A suspension or revocation of licensing privileges from one (1) year up to a lifetime license revocation as deemed appropriate by the Authority in keeping with the seriousness of the violation and the facts of the case.

(b) The licensee whose licensing privileges may be suspended or revoked, and the Authority may enter into an agreement to mitigate the suspension or revocation by agreeing to forfeiture of purse money won.

(5) Suspension of owner's horse. A horse that registers a TCO2 level in violation of 810 KAR 1:018 shall be subject to suspension from racing in Kentucky as follows:

- (a) For a first offense, no suspension;
- (b) For a second offense, a suspension from fifteen (15) days to sixty (60) days;
- (c) For a third offense, a suspension from sixty (60) days to 180 days; and
- (d) For a fourth offense, a suspension from eight (8) months to one (1) year.

Section 6. Shock Wave Machine and Blood Gas Machine Penalties. A person who violates or causes the violation of Section 19 (5) (a), 19(5)(b), 19(9) or 19(10) of 810 KAR 1:018 shall be subject to the following penalties:

(a) For a first offense:

1. A suspension or revocation of licensing privileges from one (1) month to three (3) months as deemed appropriate by the Authority in keeping with the seriousness of the violation and the facts of the case

2. The licensee whose licensing privileges may be suspended or revoked, and the Authority may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of \$1,000 to \$5,000.

(b) For a second offense:

1. A suspension or revocation of licensing privileges from three (3) months to six (6) months as deemed appropriate by the Authority in keeping with the seriousness of the violation and the facts of the case.

2. The licensee whose licensing privileges may be suspended or revoked, and the Authority may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of \$5,000 to \$10,000.

(c) For a third offense:

1. A suspension or revocation of licensing privileges from six (6) months to one (1) year as deemed appropriate by the Authority in keeping with the seriousness of the violation and the facts of the case.

2. The licensee whose licensing privileges may be suspended or revoked, and the Authority may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine of \$10,000 to \$20,000.

Section 7. Persons with a Suspended or Revoked License. (1) A person shall not train a horse or practice veterinary medicine for the benefit, credit, reputation, or satisfaction of an inactive person. This prohibition shall not prevent the partners in a veterinary practice from providing services to horses as long as the inactive person does not receive a pecuniary benefit from those services.

(2) An associated person of an inactive person shall not:

- (a) Assume the inactive person's responsibilities at a location under the jurisdiction of the Authority;
- (b) Complete an entry form for a race to be held in the Commonwealth of Kentucky on behalf of or for the inactive person or an owner or customer for whom the inactive person has worked; or
- (c) Pay or advance an entry fee for a race to be held in the Commonwealth of Kentucky on behalf of the inactive person or owner or customer for whom the inactive person has worked.

(3) An associated person who assumes the responsibility for the care, custody, or control of an unsuspended horse owned (fully or partially), leased, or trained by an inactive person shall not:

- (a) Be paid a salary directly or indirectly by or on behalf of the inactive person;
- (b) Receive a bonus or any other form of compensation in cash, property, or other remuneration or consideration;
- (c) Make a payment or give remuneration or other compensation or consideration to the inactive person or associated person; or

(d) Train or perform veterinarian work for the inactive person or an owner or customer of the inactive person at a location under the jurisdiction of the Authority.

(4) A person who is responsible for the care, training, or veterinarian services provided to a horse formerly under the care, training, or veterinarian services of an inactive person shall:

(a) Bill customers directly on his or her bill form for any services rendered at or in connection with any race meeting in the Commonwealth of Kentucky;

(b) Maintain a personal checking account totally separate from and independent of that of the inactive person to be used to pay expenses of and deposit income from an owner or client of the inactive person;

(c) Not use the services, directly or indirectly, of current employees of the inactive person; and

(d) Pay bills related to the care, training, and racing of the horse from a separate and independent checking account. Copies of the invoices for such expenses shall be retained for not less than six (6) months after the date of the reinstatement of the license of the inactive person or the expiration of the suspension of the inactive person's license.

Section 8. Other Disciplinary Measures. (1) A person who violates 810 KAR 1:018, Section 6, regarding furosemide and adjunct bleeder medication use on raceday shall be treated the same as a person who has committed a Class C drug violation.

(2) A person who violates 810 KAR 1:018, Section 8(3) for administering more than one (1) permissible Non-Steroidal Anti-Inflammatory Drug (NSAID) shall be treated the same as a person who has committed a Class B drug violation.

(3) A person who violates 810 KAR 1:018, Section 19(2) shall be treated the same as a person who has committed a drug violation of the same class, as determined by the Authority after consultation with the Equine Research Drug Council.

(4) A person who violates 810 KAR 1:018, Section 19(3) shall be treated the same as a person who has committed a Class A drug violation.

Section 9. Disciplinary Measures by Stewards. (1) Upon finding a violation or an attempted violation of the provisions of KRS Chapter 230 relating to thoroughbred racing or Title 810 KAR, if not otherwise provided for in this administrative regulation, the stewards may impose one (1) or more of the following penalties:

(a) If the violation or attempted violation may affect the health or safety of the horse or a participant in a race or may affect the outcome of a race, declare a horse or a licensee ineligible to race or disqualify a horse or licensee in a race;

(b) Suspend or revoke a person's licensing privileges for a period of time of not more than five (5) years as may be deemed appropriate by the stewards in keeping with the seriousness of the violation and the facts of the case; or

(c) Cause a person, licensed or unlicensed, found to have interfered with, or contributed toward the interference of the orderly conduct of a race or race meeting, or person whose presence is found by the stewards to be inconsistent with maintaining the honesty and integrity of the sport of horse racing to be excluded or ejected from association grounds or from a portion of association grounds.

(2) The licensee whose licensing privileges may be suspended or revoked and the stewards may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine in an amount not to exceed \$5,000 as may be deemed appropriate by the stewards in keeping with the seriousness of the violation and the facts of the case.

Section 10. (1) Disciplinary measures by the Authority. Upon finding a violation or an attempted violation of the provisions of KRS Chapter 230 relating to thoroughbred racing or Title 810 KAR, if not otherwise provided for in this administrative regulation, the Authority may impose one (1) or more of the following penalties:

(a) If the violation or attempted violation may affect the health or safety of the horse or a participant in a race or may affect the outcome of a race, declare a horse or a licensee ineligible to race or disqualify a horse or licensee in a race;

(b) Suspend or revoke a person's licensing privileges for a period of time of not more than five (5) years as may be deemed appropriate by the Authority in keeping with the seriousness of the violation; or

(c) Eject or exclude persons from association grounds for a length of time the Authority deems necessary.

(2) The licensee whose licensing privileges may be suspended or revoked and the Authority may enter into an agreement to mitigate the suspension or revocation by agreeing to payment of a fine in an amount not to exceed \$50,000 as may be deemed appropriate by the Authority in keeping with the seriousness of the violation and the facts of the case.

Section 11. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "The Kentucky Horse Racing Authority Uniform Drug and Medication Classification Schedule", 11/05; and

(b) "The Kentucky Horse Racing Authority Withdrawal Guidelines", 2/06 is hereby incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Kentucky Horse Racing Authority, 4063 Iron Works Pike, Lexington, Kentucky 40511, Monday through Friday, 8 a.m. to 4:30 p.m.

Section 12. The requirements, implementation, and enforcement of this emergency administrative regulation shall begin on September 7, 2005. (18 Ky.R. 3290; Am. 19 Ky.R. 408; eff. 8-1-92; 27 Ky.R. 1609; 2466; eff. 3-19-2001; 32 Ky.R. 756; 1136; 1893; eff. 5-5-06.)